Government Elections Act, 1960, of the Federation. An application was made on behalf of the respondents for an order to dismiss the petition on the ground that the Federal Court has no jurisdiction in the matter.

Held: the State enactment and the order made thereunder were clearly inconsistent with the Federal legislation and were therefore invalid and the Federal Court has jurisdiction to make an order so declaring.

FEDERAL COURT ORIGINAL JURISDICTION.

P. Mooney (*Miss S. C. Tang* with him) for the petitioners.

Au Ah Wah (Treasury Solicitor) for the respondents.

Cur. Adv. Vult.

Ong Hock Thye F.J.: Mr. Au Ah Wah, the Treasury Solicitor, moves this court, on behalf of the respondents, for an order dismissing the petition herein on the ground that the Federal Court, as constituted under the Courts of Judicature Act 1964, has no jurisdiction in the matter.

The question raised by the petition arose in this manner. On July 1, 1966 the Chief Minister of Penang took over the functions of the Mayor, whereupon the State Government proceeded to administer the municipal affairs of the city. This was done pursuant to an order termed the City Council of George Town (Transfer of Functions) Order, 1966, made under sub-section (1) of section 398B of the Municipal Ordinance, which section was inserted in the Municipal Ordinance by the Municipal (Amendment) (Penang) Enactment, 1966, an enactment of the State Legislature.

The petitioners claim that the said order and enactment, being inconsistent with a federal law, namely, the Local Government Elections Act, 1960, are void by virtue of article 75 of the Constitution of Malaysia and they ask for declarations to that effect. The article referred to is as follows:—

"If any State law is inconsistent with a Federal law, the Federal law shall prevail and the State law shall, to the extent of the inconsistency, be void."

The grounds on which the petition is sought to be dismissed are set out in an affidavit by an officer of the Attorney-General's Chambers, of which the relevant portion reads:—

"5. Under article 128(1)(a) of the Constitution of Malaysia the Federal Court has jurisdiction only to determine on the grounds that the State has no power to make laws, in this case section 389B of the Municipal Ordinance (S.S. Cap. 133), the City Council of George Town (Transfer of Functions) Order, 1966 (Penang P.U. No. 46 of 1966). In other words the Federal Court only has jurisdiction to determine on the competency of the State or Parliament to make laws.

6. By virtue of article 74 and the Ninth Schedule List II item 4 the State of Penang has the power to enact section 398B of the Municipal Ordinance (S.S. Cap. 133) and the City Council of George Town (Transfer for Functions) Order, 1966 (Penang P.U. No. 46 of 1966)."

From what I can gather of the learned treasury solicitor's turgid arguments, his contention is that, since the State of Penang "has the power to enact section 398B" together with the consequential order, whereas the "Federal Court only has jurisdiction to determine on the competency of the State or Parliament to make laws," the Ninth Schedule concludes the matter so far as this court is concerned.

The learned treasury solicitor persists in this contention notwithstanding his own voluntary admission in this court of a clear conflict between section 3 of the Local Government Elections Act, 1960, a Federal law, and section 398B of the State Enactment. In effect, he submits that this court is debarred from making any declaration affirming a fact which he does not condescend to dispute, although a High Court, in his view, may do so, forgetting the provisions of section 48(1) of the Courts of Judicature Act.

My view, with all respect, is that he understands neither article 75 nor article 128(1)(a) of the Constitution.

Article 128(1)(a) gives the Federal Court exclusive jurisdiction to determine "any question whether a law made by Parliament or the Legislature of a State is invalid on the ground that it makes provision with respect to a matter with respect to which Parliament or, as the case may be, the Legislature of a State has no power to make laws." Since a State law is invalidated to the extent of any inconsistency therein with a Federal law, by article 75, notwithstanding even that the State law may be within the competency of the State Legislature, the learned treasury solicitor's argument is manifestly absurd; so much so that I consider it frivolous and vexatious enough to justify an order for costs were I not disallowed from doing so by the provisions of section 47 of the Courts of Judicature Act, 1964.

The application is dismissed.

Barakbah L.P. and **Azmi C.J.** concurred.

Application dismissed.

Solicitors: *Skrine & Co.*

S.E.A.C. CO. v. ANG AH BAK

[F.C. (Tan Ah Tah F.J., Chua and Winslow JJ.) November 10, 1966]

[Singapore — Federal Court Civil Appeal No. Y8 of 1966]

Landlord and Tenant — Tenant estopped from denying title of landlord by whom he is let into possession — Subletting — Tenant receiving rent in excess of 110% of rent paid by him — Material time — Whether landlord entitled to possession if tenant has stopped receiving excessive rents before termination of tenancy — Control of Rent Ordinance, (Cap. 242), s. 15(1)(g).

The plaintiff, respondent herein, had obtained judgment ([1966] 2 M.L.J 45) against the defendants (appellants) whom she claimed were her subtenants on the ground floor that they had sublet a portion of the premises let to them and were in receipt of rents exceeding one hundred and ten per cent of the rent paid by them. The defendents denied that they were tenants of the plaintiff. It was also contended that as the defendants had stopped receiving the excessive rents before the contractual tenancy was determined they were not in breach of paragraph (g) of section 15(1) of the Control of Rent Ordinance.

Held: (1) the defendants were estopped from denying the title of the landlord by whom they were let into possession;

(2) the landlord's right of action for recovery of possession arises immediately upon the tenant subletting at a rent in excess of the maximum permitted under paragraph (g) of section 15(1) of the Control of Rent Ordinance and therefore the learned trial judge was correct in this case in giving judgment for possession against the defendants.

Cases referred to:—

(1) *Ida Fernandez* v. *Murugiah* [1950] M.L.J. 83.

(2) *Mohamed Ismail* v. *Choo Pin* [1954] M.L.J. 183.

(3) *Woon Guat Chin* v. *Lim Sian Poon* [1954] M.L.J. 184.

(4) *Hooi Moon* v. *Suppiah Chettiar* [1954] M.L.J. 186.

(5) *Wong Yue* v. *Lim Teng Kooi* [1958] M.L.J. 53.

(6) *Wong Miew Choon* v. *Loh Fatt* [1961] M.L.J. 219.

FEDERAL COURT.

Lim Chor Pee (*T. T. B. Koh* with him) for the appellants.

S. K. Lee for the respondent.

Cur. Adv. Vult.

Chua J. (delivering the judgment of the Federal Court): This appeal arises from an action commenced by the plaintiff (the respondent) in the High Court against the defendants (the appellants) for recovery of possession of the ground and first floors of No. 11 Phillip St., Singapore, of which the plaintiff claimed that she was the chief tenant.

The plaintiff's case was that the defendants were her sub-tenants in respect of the ground and first floors of the premises and that the defendants had sublet a room on the ground floor and had collected rents in excess of the recoverable rent for that part or alternatively the rents received by the defendants for the part sublet exceeded one hundred and ten per centum of the recoverable rent paid by the defendants in contravention of paragraph (g) of section 15(1) of the Control of Rent Ordinance (Cap. 242), (hereinafter referred to as the Ordinance).

The defendants denied that they were tenants of the plaintiff and alleged that the tenancy of the whole premises vested in Tan Sin Peng, a partner in their firm, by virtue of his being the sole surviving partner of Chop Chin Cheong to whom the tenancy of the whole premises was first granted by the landlord in 1942. They admitted the subletting of the room on the ground floor but denied that there was contravention of paragraph (g) of section 15(1) of the Ordinance.

The evidence of the plaintiff was shortly as follows. She had been living at No. 11 Phillip St. continuously from the beginning of the Japanese occupation with her husband Tan Tian Kit and she now occupied the second floor of the house. Her husband, Tan Sin Peng and others were partners in Khye Giap & Co. at No. 11 Phillip St. This firm dissolved and in 1942 her husband commenced the business of Chop Chin Cheong at No. 11 Phillip St. and took the tenancy of the whole building. Her husband was the sole proprietor of the chop and the tenancy was in the name of the chop and the rent was $100 p.m. Shortly after that Tan Sin Peng rented from her husband half of the ground floor of the premises at a rental of $50 p.m. and carried on business there under the style of Tan Sin Peng Shyoko. Her husband died on 2nd August, 1944, and the business of Chop Chin Cheong was wound up by the Chinese Bankers Trust Ltd., the administrators of her husband's estate. After her husband's death she had paid the rent of the premises. She approached the landlord of the house and requested him to change the rent receipts into her name. The landlord said that he only recognised Chop Chin Cheong and would accept rent only from her and nobody else and that it was unnecessary to issue receipts in her name. Ever since then the landlord had been accepting rent from her and issuing rent receipts to her in the name of the chop up to the present. When Chop Chin Cheong was wound up, she let the whole of the ground floor to Tan Sin Peng at his request at a rental of $100 p.m. It was agreed that she was to pay all the municipal charges in respect of the whole premises. In 1945, after the liberation of Singapore, Tan Sin Peng requested her to let to him the first floor of the premises as well in consideration of his paying the municipal charges in respect of the whole premises. The municipal charges then ranged from $40 to $60 p.m. She agreed and thereupon Tan Sin Peng became her tenant in respect of the ground and the first floors. In 1945 the landlord increased the rent to $125 p.m. and she in turn increased Tan Sin Peng's rent from $100 to $125 p.m. In February, 1954, the landlord increased the rent to $132.50 p.m. and she in turn increased Tan Sin Peng's rent to $132.50 p.m. The rent receipts issued to Tan Sin Peng were at first in the name of Tan Sin Peng & Co. and when in December, 1961, Tan Sin Peng changed the name of his firm to S.E.A.C. & Co. the rent receipts were issued in

that name. In May, 1955, Tan Sin Peng rented out a small room on the ground floor of the premises to Hin Seng & Co. at a rental of $190 p.m. including municipal charges. Later Hin Seng & Co. made an application to the Rent Conciliation Board and the rent was reduced from $190 p.m. to $35 p.m. In September, 1960, Tan Sin Peng was owing her rent from November, 1959, to September, 1960, and she instructed her solicitors to recover the arrears of rent. Eventually Tan Sin Peng paid the arrears of rent on the 13th December, 1960. On the 31st July, 1962, she served on the defendants a notice to quit in writing terminating the tenancy on the 31st August, 1962.

Tan Sin Peng's evidence was shortly as follows. Chop Chin Cheong was started by him and Tan Tian Kit, the plaintiff's husband, in equal shares. Rent was paid by Tan Tian Kit in the name of the chop. In 1942 both of them were arrested by the Japanese on suspicion that they had bought stolen goods. They were kept in custody for 10 days and were eventually tried and discharged. This incident affected Tan Tian Kit's health and from then he took very little part in the actual running of the business. As Tan Tian Kit was very much afraid of the Japanese, they started another firm under the name of Tan Sin Peng Shyoko. This firm was just a blind and was not registered. Chop Chin Cheong carried on business until the death of Tan Tian Kit. He then sold all the goods of Chop Chin Cheong and handed over the proceeds of sale to a clerk of the chop in order to pay Tan Tian Kit's funeral expenses. He remained in occupation of the premises and continued to pay the rent in the name of Chop Chin Cheong. After Tan Tian Kit's death he found plaintiff's mother and sister living on the first floor. He objected and they moved out and he then occupied the first floor. The plaintiff requested him, through his mother, to allow her to stay on the second floor of the premises free of rent and he agreed. He used to hand the rent in cash to the plaintiff every month and she used to pay it to the landlord. All along he paid the municipal charges in respect of the whole premises. Plaintiff requested that the tenancy should remain in the name of Chop Chin Cheong and he agreed. About seven months after the death of Tan Tian Kit he started Tan Sin Peng & Co. of which he was the sole proprietor. Later he changed the name of the firm to S.E.A.C. Co. He and his wife are the present partners of S.E.A.C. Co. In 1948 the plaintiff started issuing him receipts for the rent. He told her that he did not rent the premises from her but she kept on issuing those receipts. He consulted his solicitors who advised him to send the rent to the plaintiff with a request "please pay to landlord." In September, 1955, he let out a room on the ground floor of the premises to Hin Seng & Co. at $190 p.m. including municipal charges. In 1962 Hin Seng & Co. made an application to the Rent Conciliation Board to fix the rent of the room and the rent was fixed at $35 p.m. including municipal charges commencing from 1st July, 1962. He admitted that there was a period of about a year when he could not pay the rent regularly as his business was bad and he eventually paid the plaintiff and asked for rent receipts. He also admitted that it was only after the commencement of these proceedings that he approached the landlord to try and get the tenancy changed into his name but he was unsuccessful.

On the evidence before him the learned judge came to the conclusion:—

(1) that Tan Sin Peng was never a partner of Chop Chin Cheong and that Tan Tian Kit was the sole proprietor thereof;

(2) that the plaintiff was the tenant of the whole premises;

(3) that the defendants were sub-tenants of the plaintiff in respect of the ground and first floors of the premises;

(4) that the plaintiff had made out a case for recovery of possession under paragraph (g) of section 15(1) of the Ordinance in that the defendants had received rents which exceeded in the aggregate one hundred and ten *per centum* of the recoverable rent paid by them.

Counsel for the defendants has urged us to reverse the conclusion of fact arrived at by the learned judge that Tan Sin Peng was not a partner of Chop Chin Cheong. We have considered very carefully the submissions of counsel. The learned judge has given his reasons for not believing Tan Sin Peng and there was enough evidence on which the learned judge could arrive at his finding. In our view it is quite impossible to say that the learned judge was wrong in coming to the conclusion he arrived at. We see no reason to interfere with the finding of the learned judge.

The next point taken on behalf of the defendants was that the learned judge was wrong in holding that the plaintiff was the chief tenant of No. 11 Phillip St. and that the defendants were sub-tenants of the plaintiff in respect of the ground and first floors of the premises. It was submitted by counsel that on the death of the plaintiff's husband, as the tenancy had not been terminated by the landlord, the tenancy devolved on the Chinese Bankers Trust Ltd. the legal personal representative of Tan Tian Kit and not on the plaintiff, the widow.

It would appear from the plaintiff's evidence that after the death of her husband she entered

into an arrangement with the landlord whereby the landlord agreed to accept rent only from her but that the rent receipts would continue to be issued in the name of Chop Chin Cheong. It is clear that the Chinese Bankers Trust Ltd. took no interest at all in the tenancy. For reasons which will appear hereafter it is unnecessary to make a definite finding of fact as to who is the lawful tenant of the whole premises. The issue in this case is whether there was a relationship of landlord and tenant as between the plaintiff and the defendants.

It is clear law that the relationship of landlord and tenant may be brought into being even though the landlord has no title to the land of which he has purported to create a tenancy. Such a tenancy arises on estoppel: 15 *Halsbury's* Laws of England, 3rd Ed., p. 247 para. 455.

In this case by virtue of section 16 of the Ordinance the plaintiff as widow of the tenant of the whole premises has the right to remain in possession of the premises for as long as she does not contravene any of the provisions of section 15(1) of the Ordinance. It is clear from the evidence that it was the plaintiff who let out to Tan Sin Peng the whole of the ground floor of the premises and later the first floor of the premises as well. Counsel for the defendants submitted that it was not the plaintiff who let Tan Sin Peng into possession but the plaintiff's husband. In our view the true position is that it was the plaintiff who let Tan Sin Peng into possession of the whole of the ground floor and the first floor. The law is clear that a tenant is absolutely estopped from denying the title of the landlord by whom he was let into possession: 23 *Halsbury's* Laws of England, 3rd Ed. p. 409 para. 988. In our view the learned judge was correct in finding that the defendants were sub-tenants of the plaintiff in respect of the ground and first floors of the premises.

Lastly it was submitted on behalf of the defendants that the learned judge erred in law in finding that the defendants were in breach of paragraph (g) of section 15(1) of the Ordinance.

The relevant portion of paragraph (g) of section 15(1) reads as follows:—

> "Where the tenant having sublet the premises or part thereof *receives* in respect of such subletting, rents which exceed in the aggregate one hundred and ten per centum of the recoverable rent paid by the tenant himself including the apportioned rental or value of any part of the premises retained by the tenant or not sublet by him."

The defendants conceded that from September, 1958, till 31st June, 1962, they received from Hin Seng & Co. rents which including the apportioned rental or value of the part of the premises retained by them exceeded in the aggregate one hundred and ten per centum of the recoverable rent paid by him.

Counsel for the defendants contended that the words "receives in respect of such subletting rents . . . ." in paragraph (g) of section 15(1) of the Ordinance related to the time when the contractual tenancy terminated and as the defendants had stopped receiving from Hin Seng & Co. a rent in excess of the maximum permitted under paragraph (g) before the contractual tenancy was determined they were not in breach of paragraph (g) and the plaintiff was not entitled to possession. In support of his submission counsel relied mainly on the following passage in the judgment of Murray-Aynsley C.J. in *Ida Fernandez* v. *Murugiah.*[1]

> "Whether the case falls within one of the exceptions or not depends on the state of facts at the moment when the previous tenancy is determined."

Counsel also relied on the following passage in the judgment of Briggs J. in the case of *K. S. Mohamed Ismail* v. *Choo Pin,*[2] at p. 184:—

> "It is necessary to consider what the situation was when the contractual tenancy ended. If then the tenant was entitled to protection against deprivation of possession, he became by holding over a statutory tenant; but, if he was not protected against deprivation of possession, he could not become a statutory tenant and never has become one."

We were informed that there had been no decision on this point by the courts in Singapore but there had been several decisions by the courts in Malaya.

Section 13(1)(j) of the Control of Rent Ordinance, 1948, of Malaya provides:—

> "13. (1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely —
>
> (j) where the tenant, having sub-let the premises or part thereof, receives, in respect of such sub-letting, rents (exclusive of any payment by the tenant for Municipal or Town Board services) which exceed in the aggregate seventy-five per cent of the rent paid by the tenant."

In the case of *K. S. Mohamed Ismail* v. *Choo Pin* the tenant, notwithstanding receipt of a notice determining his contractual tenancy, continued up to the very last date when his tenancy was determined, to charge his sub-tenants rents at a rate in excess of the maximum allowed by paragraph (j) of section 13(1) of the Control of Rent Ordinance, 1948, and Briggs J. held that in those circumstances the tenant never became a statutory tenant upon the determination of his contractual tenancy and the landiord was therefore entitled to recover possession. Briggs J. in that case clearly confined his opinion to the facts set out in the case stated and he said (at p. 184):—

> "I wish to make it clear that this decision does not deal with the legal consequences which would have ensued, if the payments had been discontinued at any time prior to the expiration of the contractual tenancy."

In the case of *Woon Guat Chin* v. *Lim Sian*

Poon,[3] Thomson J. (as he then was) said (at p. 185) :—

"Construing para. (j) (of section 13(1) of the Control of Rent Ordinance, 1948,) strictly it seems to me that it is contravened if at any time, or, at any rate, any time after the commencement of the Ordinance, the tenant has received rents amounting to more than 75 *per cent* of the rent paid by him to the landlord."

In *Hooi Moon* v. *Suppiah Chettiar,*[4] the tenant had reduced the rent that he was collecting from his sub-tenant to within the legal maximum before the ejectment proceedings were started but subsequent to a notice to quit. It was argued that the words "receives . . . rent." in paragraph (j) of section 13(1) of the Control of Rent Ordinance, 1948, related to the time when ejectment proceedings were started. Spenser Wilkinson J. in rejecting this argument said (at p. 187) :—

"If the provisions of paragraph (j) are construed in the manner suggested by Mr. Ong Huck Lim the result would be as far as I can see that a tenant could charge his sub-tenants as much rent as he chose providing that he reduced the rent before ejectment proceedings had actually been started against him in court. Where a statute is not clear it is permissible to look at the possible results of different constructions in order to see what the intention of the Legislature was. In my opinion it could not have been the intention of the Legislature to allow a tenant to make a profit out of his sub-tenants and then to retain that profit by the simple expedient of reducing the rent when he was threatened by the landlord with ejectment."

Good J. in the case of *Wong Yue* v. *Lim Teng Kooi,*[5] followed the opinion of Thomson J. in the case of *Woon Guat Chin* v. *Lim Sian Poon,* which was set out above.

In the case of *Wong Miew Choong* v. *Loh Fatt,*[6] the tenant had been ordered to give up possession of the premises by the sessions court as he had contravened the provisions of paragraph (j) of section 12(1) of the Control of Rent Ordinance, 1956, of Malaya and he appealed on the ground that at the date when the contractual tenancy was determined he was not receiving in respect of the portion of the premises sublet by him any sum exceeding by more than 10% the rent of the whole premises so as to entitle the landlord to possession. Ong Hock Thye J. (as he then was) said, at p. 220 :—

"The learned president in this case felt he was bound to follow the decision in *Wong Yue* v. *Lim Teng Kooi* and in my view he was entirely correct in doing so."

The statement of Murray-Aynsley C.J. in *Ida Fernandez* v. *Murugiah,* relied on by counsel for the defendants to support his submission, is *obiter* and in any case it seems to us that that statement was expressed in terms that are too wide and cannot be applied to every case where a plaintiff is seeking to recover possession under the provisions of section 15(1) of the Ordinance. In our view the opinion of Thomson J. in the case of *Wong Guat Chin* v. *Lim Sian Poon* is a correct one. The learned judge was therefore correct in holding that a landlord's right of action for recovery of possession arises immediately upon the tenant subletting at a rent in excess of the maximum permitted under paragraph (g) of section 15(1) of the Ordinance.

For these reasons we dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Chor Pee & Hin Hiong; S. K. Lee.*

PUBLIC PROSECUTOR v. GOH KEE CHUAN

[A.Cr.J. (Ong Hock Sim J.) November 16, 1966]

[Penang — Criminal Appeal No. 13 of 1966]

Criminal Law and Procedure — Trial — Preliminary objection on procedural ground — Whether magistrate has power to acquit without hearing evidence.

The accused had been charged for the offence of failing to have an attendant at the rear of his vehicle for the purpose of signalling overtaking traffic, which was one of the conditions of the haulage permit issued to him. At the trial defence counsel raised the preliminary objection that the notice which was required to be annexed to the summons under section 146(3) of the Road Traffic Ordinance, 1958, was not so annexed. The learned magistrate acquitted and discharged the accused.

Held: a magistrate has no power to acquit and discharge an accused person upon a preliminary objection. without hearing evidence on behalf of the prosecution.

Cases referred to:—

(1) *Queen* v. *Hughes* (1878-79) 4 Q.B.D. 614.

(2) *Public Prosecutor* v. *Liew Choo Kwong & Ors.* [1962] M.L.J. 382.

(3) *Kuppusamy* v. *Public Prosecutor* [1948] M.L.J. 25.

MAGISTRATE'S CRIMINAL APPEAL.

Haji Suhaimi bin Dato' Kamaruddin (Deputy Public Prosecutor) for the appellant.

Yeap Ghim Guan for the respondent.

Ong Hock Sim J. (delivering oral judgment): In this case I allow the appeal and set aside the order of acquittal and discharge made by the learned magistrate at Butterworth upon a preliminary objection taken by defence counsel that the notice which was, under section 146(3) of the Road Traffic Ordinance, 1958, to be annexed to the summons issued for an offence against the Ordinance which was compoundable under section 147 was not so annexed. Upon such preliminary objection, it is my view that the magistrate has no power whatsoever to acquit and discharge, not having heard any evidence on behalf of the prosecution. If it is construed that the notice is mandatory, that may invalidate the summons but it does not affect the jurisdiction of the magistrate to try a person for an offence if it is one within his competence. *The Queen* v. *Hughes* [1] and the case of *Public Prosecutor* v. *Liew Choo Kwong & Ors.*[2] clearly say that once